

day benchmark for PM MI 13.1-02 in May, as the remaining 60 LLNs were delayed a total of 189 days, or an average of just over three days.

### **CONCLUSION**

40. Pursuant to Part II.E. of the Consent Decree entered into between SBC Communications Inc. ("SBC") and the Federal Communications Commission, released on May 28, 2002,<sup>23</sup> I hereby affirm that I have: (a) received the training SBC is obligated to provide to all SBC FCC Representatives; (b) reviewed and understand the SBC Compliance Guidelines; (c) signed an acknowledgment of my training and review and understanding of the Guidelines; and (d) complied with the requirements of the SBC Compliance Guidelines.
41. This concludes my affidavit.

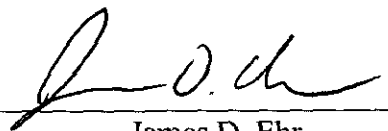
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<sup>23</sup> See Order, *SBC Communications, Inc.*, 17 FCC Rcd 10780 (2002).

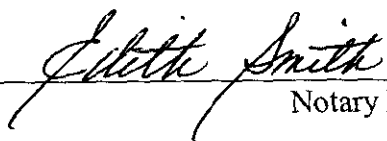
STATE OF ILLINOIS     )  
                                  )  
COUNTY OF COOK     )

I declare under penalty of perjury that the foregoing is true and correct. Executed on

JULY 18, 2003  
(date)

  
James D. Ehr

Subscribed and sworn to before me this 18 day of July, 2003.

  
Notary Public





**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application by SBC Communications Inc.,	)	
Michigan Bell Telephone Company, and	)	WC Docket No. 03-138
Southwestern Bell Communications Services,	)	
Inc. for Provision of In-Region, InterLATA	)	
Services in Michigan	)	

**SUPPLEMENTAL REPLY AFFIDAVIT OF  
JAMES D. EHR AND SALVATORE T. FIORETTI  
REGARDING THIRD-PARTY PERFORMANCE EVALUATION**

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### **Schedule of Attachments**

- Attachment A**      BearingPoint June 30, 2003 Performance Metrics Update Report and Related Errata
- Attachment B**      BearingPoint July 18, 2003 Clarification Letter

The undersigned, James D. Ehr and Salvatore T. Fioretti, being of lawful age, being duly sworn, depose and state:

**PROFESSIONAL EXPERIENCE AND EDUCATIONAL BACKGROUND**

1. My name is James D. Ehr. I am the same James D. Ehr who filed a Supplemental Affidavit jointly with Salvatore T. Fioretti ("Supplemental Aff.") on June 19, 2003 on behalf of Michigan Bell Telephone Company ("Michigan Bell") in this proceeding (Supp. App. A, Tab 5).<sup>1</sup> I also filed an initial affidavit on January 16, 2003 ("Ehr Aff.") (App. A, Tab 9) and a reply affidavit on March 4, 2003 ("Ehr Reply Aff.") (Reply App., Tab 8) on behalf of Michigan Bell in its Initial Application.<sup>2</sup>
2. My name is Salvatore T. Fioretti. I am the same Salvatore T. Fioretti who filed the Supplemental Affidavit jointly with James D. Ehr on June 19, 2003 on behalf of Michigan Bell in this proceeding.

**PURPOSE AND SCOPE OF AFFIDAVIT**

3. The purpose of our Supplemental Reply Affidavit is to respond to claims made in response to Michigan Bell's Supplemental Application regarding third-party performance evaluations.<sup>3</sup> Specifically, we address the two basic claims made by AT&T and a few

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<sup>1</sup> To the extent this Supplemental Reply Affidavit refers to "SBC Midwest," the term means the five state local exchange carrier operations of Michigan Bell; Illinois Bell Telephone Company; Indiana Bell Telephone Company Incorporated; The Ohio Bell Telephone Company; and Wisconsin Bell, Inc.

<sup>2</sup> *Application of SBC Communications Inc., et al., for Provision of In-Region, InterLATA Services in Michigan*, WC Docket No. 03-16 (FCC filed Jan. 16, 2003) ("Initial Application" or "WC Docket 03-16").

<sup>3</sup> This Supplemental Reply Affidavit should be read in conjunction with the following documents that were referred to in the Supplemental Affidavit: the Affidavit of Daniel Dolan and Brian Horst, *attached to* Initial Application (App. A, Tab 8) ("Dolan/Horst Aff."); Second Affidavit of Daniel Dolan and Brian Horst, *attached to* Reply Comments of SBC Communications, WC Docket No. 03-16 (FCC filed Mar. 4, 2003) (Reply App., Tab 7) ("Second Dolan/Horst Aff."); Ex Parte Letter from Geoffrey M. Klineberg, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., to Marlene H. Dortch, FCC, WC Docket No. 03-16 (Mar. 28, 2003) ("March 28, 2003 Ex Parte") (providing PMR 4 and 5 analysis); Ex Parte Letter from Geoffrey M. Klineberg, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., to Marlene H. Dortch, FCC, WC Docket No. 03-16 (Apr. 1, 2003) ("April 1, 2003 Ex Parte") (providing E&Y work paper verification). See also Ex Parte Letter from Geoffrey M. Klineberg, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., to Marlene H. Dortch, FCC, WC Docket No. 03-138 (June 27, 2003) ("June 27, 2003 Ex Parte") (revising Attachment D to the Supplemental Affidavit); Ex Parte Letter from Geoffrey M. Klineberg, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., to Marlene H. Dortch, FCC, WC Docket No. 03-138 (July 10, 2003) ("July 10, 2003 Ex Parte") (providing BearingPoint's June 30, 2003 Michigan Update PMR Report and Attachments Bv2 through Fv2).

CLECs, including CLECA, that Michigan Bell has not demonstrated that its reported performance results are reliable.<sup>4</sup> We also address the U.S. Department of Justice's Evaluation as it relates to the reliability of reported performance data.<sup>5</sup>

## **EXECUTIVE SUMMARY**

4. The Department of Justice acknowledges the “numerous improvements to [Michigan Bell’s] performance measurement and reporting” and recommends that “[w]hat remains is for the Commission to satisfy itself that current performance metrics are reliable ... and ... stable.”<sup>6</sup> However, based on the record to date, the Department indicates that it does not “fully agree with either side.”<sup>7</sup> First, with respect to the on-going BearingPoint review, the Department believes that this Michigan PSC-initiated test should not be ignored or minimized. We agree, but note that it must be evaluated in its proper context. The Department is also concerned that Michigan Bell may have contributed to some of the delay in testing or that we mischaracterized the meaning of BearingPoint’s “interim findings” and “exceptions.” See DOJ Evaluation at 13-14, nn.63-64. We address each of these concerns below. On the other hand, the Department correctly recognizes, and we

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<sup>4</sup> See Comments of AT&T, *Application by SBC Corporation Inc., et al., for Provision of In-Region, InterLATA Services in Michigan*, WC Docket No. 03-138, at 38-58 (FCC filed July 2, 2003) (“AT&T Comments”); Joint Declaration of Karen W. Moore and Timothy M. Connolly on Behalf of AT&T Corp., *attached to AT&T Comments* (“Moore/Connolly Decl.”). Although CLECA, MCI and TDS made passing references to data reliability, their comments were limited to high level, generalized statements that were entirely unsupported. See, e.g., Comments of the Competitive Local Exchange Carrier Association of Michigan, *et al., Application by SBC Corporation Inc., et al., for Provision of In-Region, InterLATA Services in Michigan*, WC Docket No. 03-138, at 3-8 (FCC filed July 2, 2003) (“CLECA Comments”); Comments of MCI, *Application by SBC Corporation Inc., et al., for Provision of In-Region, InterLATA Services in Michigan*, WC Docket No. 03-138, at 15-16 (FCC filed July 2, 2003) (“MCI Comments”); Declaration of Sherry Lichtenberg, ¶¶ 72-73, *attached to MCI Comments* (“Lichtenberg Decl.”); Comments of TDS MetroCom, LLC., *Application by SBC Corporation Inc., et al., for Provision of In-Region, InterLATA Services in Michigan*, WC Docket No. 03-138, at 3-5 (FCC filed July 2, 2003) (“TDS Comments”).

<sup>5</sup> Evaluation of the U.S. Department of Justice, *Application by SBC Corporation Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Michigan*, WC Docket No. 03-138, at 12-15 (FCC filed July 16, 2003) (“DOJ Evaluation”).

<sup>6</sup> *Id.* at 14.

<sup>7</sup> *Id.* at 13.

demonstrate, that simply because the BearingPoint's metric review "is incomplete does not itself show that the reported metrics are unreliable."<sup>8</sup>

5. With respect to E&Y's performance audits, the Department urges the Commission to use great care *if* E&Y's findings are used to dismiss "problems identified by BearingPoint's findings or marketplace performance data."<sup>9</sup> The "conflict" concern raised by the Department currently does not exist and is not likely to occur. As we demonstrate, there is a high correlation in findings between both firms, and there are no material conflicts or omissions that we are aware of that would undermine the reliability of reported data relied upon in this Supplemental Application.
6. The CLECs raise two basic data reliability claims, both of which are seriously flawed. First, AT&T and CLECA assert that the now completed Ernst & Young ("E&Y") performance measurement audit should not be relied upon at all because they allege E&Y is not objective and its audit was limited in scope and flawed. Second, AT&T, and to a much lesser degree CLECA, MCI and TDS, claim that BearingPoint's on-going Performance Metrics Review ("PMR"), which they concede is not complete, nonetheless should be relied upon to find that Michigan Bell's performance data is untrustworthy and inaccurate.
7. Contrary to these assertions, we demonstrate that both the completed E&Y performance audits and the completed portions of BearingPoint's PMR test provide ample grounds, together with the other indicia of reliability in the record, to conclude, that Michigan Bell's performance data are reasonably accurate and reliable. In particular, AT&T's repeated attempt to discredit E&Y's completed performance audit findings fails, once again. The fact that the methodologies used by E&Y and BearingPoint are different is

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<sup>8</sup> *Id.* at 14. The Department refers to the BearingPoint Performance Metrics Review (PMR) test as an "audit." However, it is our understanding that BearingPoint is a consulting firm, not an accounting firm, and that its test is not performed in accordance with American Institute of Certified Public Accountants ("AICPA") standards.

<sup>9</sup> *Id.* at 14.



irrelevant. This Commission has accepted E&Y's audit approach, and the on-going BearingPoint PMR testing does not in any way undercut or undermine E&Y's findings or this Commission's precedent. It is clear, therefore, that, standing alone, the E&Y audits should be more than adequate to satisfy this Commission's interest in having a third-party test of Michigan Bell's performance measurement processes and results. Any other conclusion would impose a requirement on Michigan Bell that this Commission has never imposed before.

8. Likewise, portions of the BearingPoint PMR test are not complete and, therefore, are only interim statuses that cannot be relied upon to reach any final conclusion – let alone AT&T's unreasonable conclusion of unreliable data. In any event, as we show, the Michigan PMR Update Report of June 30, 2003, identifies improvement in BearingPoint results even since our Supplemental Affidavit was filed on June 19, 2003, and fails to document any significant or material issues affecting data reliability. *See* Attachment A.
9. The narrow question, then, is whether it makes any difference to the reliability of Michigan Bell's reported performance measurement results that BearingPoint is continuing to perform its review of the same performance measurement system that E&Y has already found to be accurate and reliable. The answer is simple. It should not make any difference, unless BearingPoint is uncovering a substantial number of material problems with the way Michigan Bell is calculating or reporting significant performance measurement results that E&Y somehow overlooked or missed in its own review of those same measures. As we demonstrated in our Supplemental Affidavit, neither situation exists. And, as we show in this Supplemental Reply, the CLECs have completely failed to rebut that showing. Nothing that CLECs alleged in their Comments or that BearingPoint has found so far calls into question the conclusions of E&Y that Michigan Bell's performance measurements are accurate and reliable.

10. Finally, it is important to note what the CLECs do not allege. None of the CLECs, including AT&T, allege any serious issue with the level of wholesale service provided to them in Michigan, nor do they allege that they cannot compete in the local service market because Michigan Bell's performance measurements are unreliable. The fact is, Michigan Bell's wholesale service results reported in its performance data are excellent, and those reported results are reasonably accurate and reliable. This is shown by the most compelling evidence of all: the undisputed fact that CLECs are entering the local markets in Michigan with continued and steady real world commercial success.
11. In short, individually and together, the E&Y and BearingPoint third party reviews demonstrate that Michigan Bell is generally reporting accurate and reliable performance results on a monthly basis. There is a high degree of correlation between the completed E&Y audit and the completed portions of the BearingPoint metrics review. In conjunction with the other indicia of data reliability discussed below, these third-party verifications provide the Commission a high degree of assurance that Michigan's reported performance data for February, March, and April 2003 accurately reflect its wholesale performance

**THE E&Y AUDIT DEMONSTRATES THAT MICHIGAN BELL'S PERFORMANCE DATA ARE RELIABLE**

12. AT&T attacks E&Y's now completed performance measurement audit conclusions on four grounds: (1) E&Y allegedly lacks objectivity; (2) E&Y's audit is claimed to be limited in scope and flawed in approach; (3) BearingPoint has found many errors that E&Y missed (this issue will be discussed in the last section of our affidavit where we discuss the BearingPoint test results); and (4) finally, AT&T reasons that since Michigan Bell provides two audits, rather than one as provided in Missouri, Texas and California,

that the Commission's past precedent regarding similar audits does not apply.<sup>10</sup> Each of these claims lacks merit.

13. However, before responding to each specific issue, it is helpful to put the E&Y *and* BearingPoint evidence in context, as the Michigan Public Service Commission ("MPSC") did in its July 2, 2003 Supplemental Report, which we quote below:

The supplemental filing by SBC focuses on the issue of reliance on the performance measurement audit of E & Y and its correlation with the performance measurement testing conducted by BearingPoint.

In its January 13, 2003 report, the MPSC found that it was appropriate to use the E & Y audit, and what had been completed of the BearingPoint testing, to conclude that SBC's performance measure reporting system could be relied upon and that performance results were adequate. Subsequent progress by both E & Y and BearingPoint provide further evidence to support and strengthen that conclusion.

E & Y has completed its Corrective Action Report documenting SBC's responses to all of the open items found in its earlier audit activities. This completes E & Y's involvement in the performance measurement audit.

BearingPoint has also made considerable progress in its performance measurement testing process and has now found SBC to have satisfied nearly 50% of its performance measure testing criteria, as compared to only about 10% in October of 2002. It is expected that several more months will be necessary to complete its activities.

The MPSC has reviewed the final report of E & Y filed with the MPSC by SBC on April 30, 2003 and the recent and continuing reports filed by BearingPoint and the MPSC concludes that the high correlation in issues identified, and audit/test results, do confirm that reliance on the E & Y audit is appropriate. Given that there are methodology differences, such as 1% versus 5% materiality standard, the results of the E & Y and BearingPoint efforts are remarkably consistent.

The MPSC reiterates its January 2003 findings that there is sufficient evidence to rely on SBC's performance metrics reporting systems and metrics results. Subsequent testing by BearingPoint and the completion of E & Y's audit and verification of SBC's correction actions all provide

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<sup>10</sup> AT&T Comments at 39-45; Moore/Connolly Decl. ¶¶ 9-40.

even more conclusive evidence that performance metrics are satisfactory for Section 271 approval.<sup>11</sup>

14. The Commission should reach the same conclusion as reiterated by the MPSC in its July 2, 2003 Supplemental Report. As shown below none of the claims raised by the CLECs undercut the strong showing made in our Supplemental Affidavit that Michigan Bell's reported performance results are reasonably accurate and reliable.

#### **E&Y IS INDEPENDENT AND OBJECTIVE**

15. AT&T claims that E&Y, who is also SBC's financial auditor, is not objective because it was retained by Michigan Bell "unilaterally and without the approval of the MPSC."<sup>12</sup> First, as AT&T itself acknowledges, the MPSC already found that E&Y's objectivity was *not* compromised in any way due to the fact that it is also SBC's financial auditor.<sup>13</sup> AT&T also apparently chooses to ignore that although the MPSC did not retain E&Y, the MPSC expressly permitted Michigan Bell to supplement the record with the E&Y performance audits, and as noted above, the MPSC has based its recommendation to this Commission relying in part on these E&Y audits.
16. Not only does AT&T completely ignore the record in this proceeding, it also resorts to attacking E&Y by relying upon concerns expressed by the Texas Public Utility Commission ("Texas PUC") and the Staff of the Securities and Exchange Commission ("SEC").<sup>14</sup> With all due respect, the Texas PUC's views regarding Section 271(d) audits in the context of another proceeding are not germane to this proceeding. Clearly, AT&T does not claim, nor could it, that the Texas PUC was commenting on E&Y's objectivity

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<sup>11</sup> Supplemental Report of the Michigan Public Service Commission, *Application by SBC Corporation Inc., et al., for Provision of In-Region, InterLATA Services in Michigan*, WC Docket No. 03-138, at 5-6 (FCC filed July 2, 2003) ("July 2, 2003 Supplemental Report"). This reliance by the MPSC on the E&Y Audit Reports completely rebuts the frivolous claim made by CLECA that Michigan Bell's submission of the E&Y audit reports was an improper "end run" around the MPSC's own process, *see* CLECA Comments at 4-5, or AT&T's claim that use of E&Y somehow is somehow inconsistent with Michigan Bell's "Notice of Intent to Supplement the Record." Moore/Connolly Decl. ¶ 24.

<sup>12</sup> Moore/Connolly Decl. ¶ 12.

<sup>13</sup> *Id.* ¶ 11.

<sup>14</sup> Moore/Connolly Decl. ¶¶ 13-14.

in performing the Michigan performance audits, which to our knowledge have never been reviewed by the Texas PUC. Certainly the findings of the MPSC -- which did review all of the E&Y audit reports for Michigan -- are the relevant State commission assessments for this proceeding. Additionally, the SEC Staff investigation discussed by AT&T and CLECA is ongoing, and also is not relevant to this proceeding.<sup>15</sup> E&Y has already expressly represented that audits it performed in examining Michigan Bell's compliance with the Michigan Business Rules and its performance reporting are not proscribed services under the Sarbanes-Oxley Act or the regulations promulgated thereunder.<sup>16</sup>

17. Finally, in its desperate attempt to discredit E&Y's objectivity, AT&T rehashes two old misrepresentations when it claims: "the scope and parameters of the E&Y audit were developed and agreed to by SBC and E&Y without CLEC input" and the E&Y work plan was "cloaked in secrecy."<sup>17</sup> Both allegations were rebutted in the Affidavits of Daniel Dolan and Brian Horst in Michigan Bell's Initial Application. As E&Y represented there, the engagement team assigned to the Michigan Bell audit, as well as E&Y as a firm, is independent of SBC. During the assignment, SBC at no time sought to limit the scope of testing deemed necessary by E&Y in its professional judgment to render independent examinations reports of Michigan Bell's compliance with the applicable Michigan Business Rules and of Michigan Bell's related internal controls. Rather, the only input that SBC had to the scope, approach or procedures used by E&Y was its request that E&Y apply the same or substantially similar examinations methodology and procedures that E&Y utilized for other performance measure examinations it had performed in connection with a prior Section 271 application, and that E&Y examine all of the performance measurements for which SBC is required to report results upon in the

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<sup>15</sup> CLECA Comments at 5-6. Based on Attachment 1 to the CLECA Comments, this SEC Staff investigation has nothing to do with the audits involve in this proceeding, and has not been addressed by any administrative law judge or the SEC commissioners.

<sup>16</sup> Second Dolan/Horst Aff. ¶ 12.

<sup>17</sup> Moore/Connolly Decl. ¶ 15.

State of Michigan. Other than this direction regarding the overall scope of the engagement, SBC did not have any input into the design of E&Y's examination methodology or the selection of examination procedures performed. Finally, contrary to AT&T's claim, E&Y participated in numerous informational meetings and technical workshops with Michigan CLECs, and provided over 200 written responses to CLEC questions, including AT&T.<sup>18</sup>

**E&Y'S PERFORMANCE MEASUREMENT AUDITS WERE COMPREHENSIVE AND RIGOROUS AND SHOULD BE RELIED UPON BY THE COMMISSION**

18. Our Supplemental Affidavit summarizes the scope and approach used by E&Y, and demonstrates that these audits were comprehensive and rigorous and should be relied upon in evaluating the reliability of Michigan Bell's reported performance results.<sup>19</sup> As noted above, the MPSC obviously reached the same conclusion based on its own independent review of E&Y's audit scope and approach, based on input the MPSC Staff and the MPSC received during industry workshops and oral arguments from AT&T and others, and based on the MPSC's review of E&Y's final audit reports. Likewise, the Departments' Evaluation recognizes that E&Y's audit should not be disregarded simply because of its approach. However, AT&T repeats the same argument it made to the MPSC and to this Commission in the Initial Application, claiming that there are "profound differences between the procedures and methodologies in the E&Y and BearingPoint tests."<sup>20</sup> According to AT&T, these differences caused E&Y to fail to detect data deficiencies and preclude this Commission from relying on E&Y's final audit findings.<sup>21</sup> AT&T's concerns are misplaced and its conclusions are wrong, and should be

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<sup>18</sup> Dolan/Horst Aff. ¶¶ 8-17; *see also* Second Dolan/Horst Aff. ¶¶ 12-14.

<sup>19</sup> Supplemental Aff. ¶¶ 23-33.

<sup>20</sup> Moore/Connolly Decl. ¶ 25. MCI Comments at 15 makes a general claim that E&Y's approach was "less comprehensive". The only specific example provided is that E&Y "did not cover any of the issues associated with PMR 1." Lichtenberg Decl. ¶ 73. However, MCI is wrong since E&Y did address data collection.

<sup>21</sup> Moore/Connolly Decl. ¶ 25; *see also id.* ¶ 38.

rejected by the Commission, just as they have been rejected by the MPSC and the Department.

19. First, AT&T's observation that there are "differences between the procedures and methodologies in the E&Y and BearingPoint tests"<sup>22</sup> should not be a surprise; it agrees with what we said in our Supplemental Affidavit.<sup>23</sup> However, these differences in methods and procedures are not "profound" as AT&T claims, but rather simply reflect the fact that E&Y conducted an attestation examination in accordance with the standards established by the AICPA, whereas BearingPoint is performing a blind replication metric review based on the Michigan Master Test Plan.
20. The differences in methods and procedures that AT&T identifies have already been addressed in our Supplemental Affidavit and in the Initial Application and need not be repeated once again. These include AT&T's concerns with the temporal scope of the E&Y audit,<sup>24</sup> the fact that new systems (ICS/DSS) have been installed after the E&Y audit period,<sup>25</sup> concerns with the lack of regression testing,<sup>26</sup> the fact that E&Y was not retained to audit data retention or storage,<sup>27</sup> and was not retained to perform a detail review of technical documentation. AT&T is also critical because E&Y used an audit approach, rather than blind replication.<sup>28</sup> Finally, AT&T repeats a number of concerns it had with E&Y's controls examination.<sup>29</sup> As shown below, these differences in methodology are not relevant because they do not result in significant differences in "findings" by either E&Y or BearingPoint.

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<sup>22</sup> *Id.* ¶ 25.

<sup>23</sup> Supplemental Aff. ¶ 9.

<sup>24</sup> Moore/Connolly Decl. ¶ 26, addressed by Second Dolan/Horst Aff. ¶ 17.

<sup>25</sup> *Id.* ¶ 27, addressed by Ehr Reply Aff. ¶¶ 55-59.

<sup>26</sup> *Id.* ¶ 30, addressed by Second Dolan/Horst Aff. ¶ 36.

<sup>27</sup> *Id.* ¶ 31, addressed by Dolan/Horst Aff. ¶ 8 and Second Dolan/Horst Aff. ¶ 17.

<sup>28</sup> *Id.* ¶ 34, addressed by Second Dolan/Horst Aff. ¶ 22.

<sup>29</sup> *Id.* ¶¶ 35-38, addressed by Second Dolan/Horst Aff. ¶¶ 11, 15, 20-25.

21. AT&T appears to confuse differences in methodology, with differences in findings.<sup>30</sup>

The “minor differences” discussed in our Supplemental Affidavit clearly relate to the *findings* of the BearingPoint PMR test versus the E&Y audit, and not to the *methodologies* employed in the PMR test and the audit. And with respect to findings, as discussed in more detail below in connection with the status of BearingPoint’s PMR1, PMR4 and PMR5 testing, contrary to AT&T’s bald claim, there are no “gaping holes” in the issues identified by either E&Y or BearingPoint. Rather, as AT&T notes, E&Y has completed its examination of Michigan Bell’s corrective actions, while BearingPoint review is on-going, accounting for certain differences based on “timing.”<sup>31</sup> AT&T also acknowledges that the two firms use a different materiality standard, accounting for the other difference.<sup>32</sup>

22. In short, although there are differences in the methodologies used by E&Y and BearingPoint, such difference, by itself, cannot be used to conclude that one of the reviews is flawed. What is important is whether the same core issues are detected by the methodologies used by each firm. Michigan Bell demonstrated that there is a high correlation between the two reviews in our Supplement Affidavit. However, AT&T would have the Commission believe that they are contradictory *and* that Michigan Bell failed to pass the BearingPoint test.<sup>33</sup> Nothing could be further from the truth, and AT&T has failed to demonstrate otherwise.

#### **THE COMMISSION’S PRECEDENT CLEARLY SUPPORTS USE OF THE E&Y PERFORMANCE MEASUREMENT AUDIT**

23. Recognizing that the Commission has relied upon performance measurement audits conducted by E&Y, as well as other similar audits, to approve previous Section 271

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<sup>30</sup> *Id.* ¶ 18.

<sup>31</sup> *Id.* ¶ 19.

<sup>32</sup> *Id.* ¶¶ 20-22.

<sup>33</sup> Moore/Connolly Decl. ¶ 40.



applications, including Missouri, Texas and California, AT&T argues that the Commission should ignore its well established precedent because the facts here are different. According to AT&T, the existence of two performance reviews means that only one can apply, and the applicable review is the State-commissioned BearingPoint review, which “contradict[s]” the completed E&Y audit.<sup>34</sup> AT&T’s premise is clearly wrong. First, the State commission itself has relied on E&Y’s audit findings. Moreover, as we demonstrated in our Supplemental Affidavit and in this Supplemental Reply, there is a high degree of correlation between the issues identified by E&Y and BearingPoint. Finally, there is no contradiction. Certainly the MPSC found none, nor has AT&T established any of material consequence.

24. AT&T’s position also ignores the fact that the Commission does not require that all third party reviews be completed at the time of application. The fact that there is a completed E&Y audit *plus* an ongoing BearingPoint test should be considered a positive event. AT&T, however, would make this “positive” into a “negative,” and ask that the Commission ignore the final findings of E&Y and require the BearingPoint test be completed prior to granting long distance authorization to Michigan Bell.<sup>35</sup> However, as the Commission found in the *Georgia/Louisiana Order*, there is no requirement that all third-party performance audits must be completed at the time a Section 271 application is filed.<sup>36</sup> That reasoning applies even more here, where there are two third-party audits, one that is complete, and another that is on-going and under the close supervision of the MPSC.

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.* ¶ 40. CLECA takes the next step and argues that an application should not be filed for at least one year after all testing is complete. See CLECA Comments at 5. Both position are unreasonable and should be rejected.

<sup>36</sup> See *Application by BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, Memorandum Opinion and Order, 17 FCC Rcd 9018, ¶ 19 (2002) (“*Georgia/Louisiana Order*”).

**BEARINGPOINT'S JUNE 30, 2003 REPORT CONFIRMS THE INTERIM AND ITERATIVE NATURE OF THE PMR TEST PROCESS AND UPDATES THE PMR REPORT**

25. AT&T and Michigan Bell agree on one point: BearingPoint's PMR test is "far from complete."<sup>37</sup> AT&T notes that BearingPoint's Michigan June 30, 2003 Update Report,<sup>38</sup> shows 56.3 % of the applicable test criteria have been "Satisfied," 23.7% are "Not Satisfied" and the remaining 20% are "Indeterminate."<sup>39</sup> However, AT&T completely twists BearingPoint's testing process, its recent Interim Report and our Supplemental Affidavit to make the misguided claim that BearingPoint's Michigan June 30, 2003 Report demonstrates that Michigan Bell has a failing score and its reported results are therefore "unreliable and inadequate."<sup>40</sup> This conclusion is based on AT&T's simplistic theme that any task or any test criteria that is not yet completed by BearingPoint should be viewed by the Commission as proof that Michigan Bell's reported results are unreliable. They clearly are wrong as there is no logical basis to support such a conclusion. Before giving any evidentiary weight to a given test finding or test score it is important to put the particular issue in context based on the status of the particular issue in the BearingPoint's test process and nature and type of BearingPoint's finding.
- AT&T's simplistic approach completely fails that required exercise. As BearingPoint

<sup>37</sup> Moore/Connolly Decl. ¶ 41. Although the Department of Justice in its Evaluation refers to an event that caused some delay in BearingPoint's PMR testing over a year ago, Michigan Bell is not aware of significant delay for which it would be considered "responsible." See DOJ Evaluation at 13, n.63. Of course if the MPSC believes that the test is being delayed by Michigan Bell, it clearly has the incentive and ability to take appropriate action. Michigan Bell is using its best efforts to facilitate the completion of the PMR test at the earliest possible date. The fact of the matter is that the progress of the test is within the control of BearingPoint.

<sup>38</sup> The results from BearingPoint's Michigan OSS Evaluation Project Report Performance Metrics Update (June 30, 2003) ("Michigan June 30, 2003 Report") prior to errata posted by BearingPoint July 14 and July 17, 2003 which modified scoring for PMR4 and PMR5. The report and the errata are attached as Attachment A and are posted at <http://www.osstesting.com>.

<sup>39</sup> Some of AT&T's numbers are wrong. According to the Michigan June 30, 2003 Report, of the 270 applicable test points, 70 test points, or 25.9%, were "Not Satisfied," 48, or 17.7%, were "Indeterminate," and the remaining 152, or 56.3%, were "Satisfied." See Michigan June 30, 2003 Report at 5. BearingPoint subsequently issued an errata on July 17, 2003, correcting the June 30, 2003 Report as follows: 154 test points, or 57.0%, "Satisfied;" 61, or 22.6%, "Not Satisfied;" and 55, or 20.4%, "Indeterminate." See Attachment A; see also ¶ 26, *infra*.

<sup>40</sup> AT&T Comments at 45-47; Moore/Connolly Decl. ¶ 41. Similar misguided claims that somehow this Report shows that Michigan Bell has "failed" the BearingPoint PMR test are made by CLECA and MCI. See CLECA Comments at 6; MCI Comments at 15.

cautions: “The evaluation criteria and corresponding results in this report are intended to be considered both individually and collectively. It would be inappropriate to draw conclusions based solely on individual test measures or a limited number of test measures. Furthermore, the evaluation criteria are not of equal weight or value. Hence, any attempt to determine an overall ‘score’ based on percentage of evaluation criteria that are satisfied is strongly discouraged.”<sup>41</sup>

26. At a high “macro” level, the Michigan June 30, 2003 Report simply demonstrates the additional progress BearingPoint has made since its last update on April 30, 2003. The Michigan June 30, 2003 Report also reinforces our position that BearingPoint’s review is an iterative process and, therefore, its interim reports cannot be relied upon to reach final conclusions until the testing for a given test domain is completed.<sup>42</sup> The Michigan June 30, 2003<sup>43</sup> Report verifies this by showing additional, substantial progress since April 30, 2003. In the intervening two months, the total number of PMR test points BearingPoint now rates as “Satisfied” has increased by over 23% (from 125 to 154) while the total number of test points rated as “Not Satisfied” dropped by over 20% (from 77 to 61). The table below shows the BearingPoint test status for April 30, 2003 and June 30, 2003 and identifies the progress during the intervening two months. This positive trend is completely contrary to AT&T’s “the sky is falling” conclusion.

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<sup>41</sup> BearingPoint, Michigan OSS Evaluation Project Report, at 10 (Oct. 30, 2002) (“Michigan October 30, 2002 Report”).

<sup>42</sup> Supplemental Aff. ¶ 42.

<sup>43</sup> The updated Michigan June 30, 2003 Report includes modifications described in BearingPoint errata published on July 14 and July 17, 2003. See Attachment A.

Performance Metrics Review Draft Report Status 7/1/03		Michigan 4/30/03	Percent of Applicable Test Points	Michigan 6/30/03	Percent of Applicable Test Points
<b>PMR1</b>	Satisfied	63	50.0%	85	67.5%
	Not Satisfied	33	26.2%	30	23.8%
	Indeterminate	30	23.8%	11	8.7%
	Not Applicable	0	n/a	0	n/a
<b>PMR2</b>	Satisfied	3	100.0%	3	100%
	Not Satisfied	0	0.0%	0	0.0%
	Indeterminate	0	0.0%	0	0.0%
	Not Applicable	0	n/a	0	n/a
<b>PMR3</b>	Satisfied	27	93.1%	29	100.0%
	Not Satisfied	2	6.9%	0	0.0%
	Indeterminate	0	0.0%	0	0.0%
	Not Applicable	0	n/a	0	n/a
<b>PMR4</b>	Satisfied	5	12.5%	10	25.0%%
	Not Satisfied	9	22.5%	3	7.5%
	Indeterminate	26	65.0%	27	67.5%
	Not Applicable	32	n/a	32	n/a
<b>PMR5</b>	Satisfied	27	37.5%	27	37.5%
	Not Satisfied	33	45.8%	28	38.9%
	Indeterminate	12	16.7%	17	23.6%
	Not Applicable	0	n/a	0	n/a
<b>Total</b>	Satisfied	125	46.3%	154	57.0%
	Not Satisfied	77	28.5%	61	22.6%
	Indeterminate	68	25.2%	55	20.4%
	Not Applicable	32	n/a	32	n/a

27. For example, in the April 30, 2003 Update Report, BearingPoint reported that 50% (63) of the PMR1 test points were “Satisfied.” See BearingPoint, Michigan OSS Evaluation Project Report Metrics Update, at 5 (Apr. 30, 2003) (“April 30, 2003 Update Report”) (Supp. App. C, Tab 14). In the Michigan June 30, 2003 Report, BearingPoint shows a 35% increase in this count; 67.5% of the PMR1 test points, for a total of 85, are now “Satisfied.” See Michigan June 30, 2003 Report at 5. The Michigan June 30, 2003 Report also shows that PMR3 testing is complete and that all 29 test points are “Satisfied.” *Id.*

28. The PMR4 metrics data integrity test, which evaluates Michigan Bell's policies and practices for processing the data used to produce performance reports, also demonstrated significant progress. Since we first reported the status of the PMR4 testing, BearingPoint has moved five test points from an unsatisfied rating to "Satisfied" as a result of closing several open exceptions (see the July 14, 2003 update to the June 30, 2003 Report). See Attachment A. This shift resulted in a current score of 10 "Satisfied" test points, 3 "Not Satisfied" test points, and 27 test points that are still being tested and are therefore considered "Indeterminate." In our June 19, 2003 Supplemental Affidavit we reported that there were five open exceptions, all in retest, which affected the April 30, 2003 results. Those exceptions were Exception 134, 175, 176, 181, and 183. All of these exceptions, excluding 181, have been closed. We now update the status of each.
29. Exception 134: This issue dealt with certain product codes not being correctly mapped for inclusion in the performance reporting program.<sup>44</sup> The issues associated with Exception 134 have now been resolved and BearingPoint moved this exception into a "Closed, Satisfied" status based on its June 30, 2003 Disposition Report.
30. Exception 175: This exception was originally discussed in our Supplemental Affidavit. See Supplemental Aff. ¶¶ 109-110. On June 24, 2003, BearingPoint issued a disposition report proposing to close Exception 175 as "Not Satisfied." In the disposition report, however, BearingPoint indicates that Michigan Bell's new procedures regarding the measurement of premature disconnects for PM 114 and the modifications implemented to the measurement of PM 115 appear to be reasonable. Since Test CLEC data<sup>45</sup> is not readily available, Michigan Bell is working with BearingPoint to evaluate retest options regarding specific issues related to this exception.

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<sup>44</sup> See Supplemental Aff. ¶¶ 106-108 for a full discussion of Exception 134.

<sup>45</sup> Exception 175 is based on Test CLEC data gathered during the operational test. BearingPoint and Michigan Bell are working to determine whether there are alternate means of retesting specific issues relating to this exception.

31. Exception 176: This finding involves the capture of performance data for a single measure, PM 19 (Daily Usage File Timeliness).<sup>46</sup> This issue has now been resolved and “Closed, Satisfied” on retest by BearingPoint.
32. Exception 181: This exception was fully discussed in our Supplemental Affidavit. *See* Supplemental Aff. ¶¶ 115-116. BearingPoint continues its review, thus this exception remains open. There is nothing new to report.
33. Exception 183: The issue in this exception deals with notification reports that were not reflected in Michigan Bell’s January – April 2002 performance measurement data as a result of manual processing issues.<sup>47</sup> In our initial comments we said that Michigan Bell had requested BearingPoint to retest this measure again using data from months in 2003. BearingPoint completed its testing of current month’s data and has subsequently closed this exception as “Satisfied.”
34. The PMR5 test, which addresses metrics calculation and reporting results, improved slightly as well. Although the number of “Satisfied” test points remained constant at 27 (37.5%), the number of “Not Satisfied” test points decreased by over 15% from 33 test points (45.8%) to 28 test points (28.9%). These test points were reclassified to “Indeterminate” status as a result of the directive by the MPSC requiring BearingPoint to use the performance measure business rules that include clarifications from the recently completed six-month review.

#### **THE TEST PROCESS ASSOCIATED WITH AN INTERIM “NOT SATISFIED” FINDING**

35. Given the iterative nature of the test and the steady progress shown above, AT&T is forced to mischaracterize Michigan Bell’s position regarding the nature of BearingPoint’s testing process and its findings, in particular the various test stages associated with a “Not

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<sup>46</sup> *Id.* ¶¶ 111-114 for a full discussion of the issues involved with Exception 176.

<sup>47</sup> *Id.* ¶¶ 117-119 for a full discussion of this exception.

Satisfied” finding. AT&T appears to claim that we considered every Not Satisfied as simply reflecting a request from BearingPoint for “more information” or as being of “no real consequence” because the issue has already been addressed by Michigan or because it is a “snapshot” in the audit process.<sup>48</sup> While all that is true for many findings, AT&T fails to take into account the significant improvements that Michigan Bell has made in response to BearingPoint test findings. It also dramatically misrepresents the actual “test until pass” test process as we described it in our Supplemental Affidavit.<sup>49</sup>

36. A fundamental flaw in AT&T’s approach is its myopic focus on past events rather than the current status. BearingPoint’s reported results are predominantly based on the testing of data from July, August, and September 2002 that reflect updates or restatements as of February 5, 2003. As BearingPoint identified issues, Michigan Bell implemented corrective actions that improved the production of results; in some cases this improvement was on a going forward basis only. In some cases it was impossible to retroactively implement changes for the test months BearingPoint was reviewing. For instance, where processes changed as a result of the corrective action, it was impossible to go back in time to collect data that was not collected during the test months. Some observations or exceptions were closed without them being satisfied based on BearingPoint’s analysis of the July – September 2002 data, and as a result, some test points are “Not Satisfied.” The significant issue completely missed by AT&T is the fact that in almost all cases the underlying issues identified by BearingPoint have been corrected going forward, and do not impact the performance measurement results currently being published and the results now before the Commission.
37. AT&T also fails to acknowledge that BearingPoint has classified test points as being “Not Satisfied” because BearingPoint used a strict and literal reading of the business

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<sup>48</sup> Moore/Connolly Decl ¶¶ 42-47.

<sup>49</sup> Supplemental Aff. ¶¶ 49, 52-57.

rules to establish its test standards. Michigan Bell has taken steps in the six-month review collaborative to have ambiguous business rules clarified to eliminate these negative findings. The CLECs have agreed to these “documentation only” changes and the MPSC staff recently directed BearingPoint to conduct its testing using the clarified business rules. Consequently, some test points have been reclassified from “Not Satisfied” to “Indeterminate.” These are but two examples where the BearingPoint reported results are not by themselves sufficient as a basis for this Commission to make a decision. Michigan Bell has provided the Commission with relevant information about each finding and the current status of the test. In many cases, test points counted as “Not Satisfied” based on the July – September 2002 test results are due to the pending incorporation of the clarified business rules or a restatement (completed or pending) as a result of implemented changes, and are not issues that adversely affect Michigan Bell’s reporting of performance metrics results on a going forward basis even though the net result is the prevention of test points from being classified as “Satisfied.” It is the reliability of the performance results that Michigan Bell provides the Commission as evidence of Section 271 checklist compliance that is the crux of the decision this Commission must make, not the status of Michigan Bell’s performance measurement results as of the time period being tested by BearingPoint. As is documented in both the E&Y audit reports and the ongoing BearingPoint PMR test, issues identified by BearingPoint in the PMR test for the month of September 2002 and prior, have in large part already been addressed and do not impact the reliability of the results before this Commission.

38. As these examples show, BearingPoint’s interim testing findings are not by themselves sufficient as a basis for this Commission to make a decision. That is because in many cases, test points counted as “Not Satisfied” are either based on July – September 2002



test results that have been corrected and are in re-test, or are pending incorporation of the clarified business rules, so-called “documentation only” changes that do not impact reported results, or involve a restatement (completed or pending) as a result of implemented changes. None of these reasons, however, adversely affect Michigan Bell’s reported performance results on a going forward basis, even if that particular test point is classified “Not Satisfied.” But such a test result should not drive this Commission’s determination as AT&T urges it to do. Rather, it is the reliability of the performance results for February, March, and April 2003 that matters, not the status of Michigan Bell’s performance measurement results as of the time period being tested by BearingPoint.

39. AT&T approach is flawed for another reason as well. AT&T would have this Commission treat all test points as being of equal importance and would have the Commission assume that all test points directly and adversely affect AT&T’s ability to compete if BearingPoint has not yet classified the test point as “Satisfied.” However, BearingPoint’s evaluation criteria are not of equal weight or value. The fact is that many of the test points deal with ancillary processes or otherwise have little or no impact on CLECs. AT&T makes no effort to distinguish which unsatisfied test points are important to competitive carriers. In fact, AT&T makes no allegation that its ability to compete has been impaired as a result of BearingPoint not yet classifying any of the remaining test points as “Satisfied.”
40. The Department of Justice noted in its Evaluation that it shared commenters’ concerns that “SBC is mischaracterizing BearingPoint’s processes and its findings”<sup>50</sup> with regard to the definition of an exception and the meaning of a “Not Satisfied” finding. We believe the meaning of an “exception” as quoted in our Supplemental Affidavit are consistent

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<sup>50</sup> DOJ Evaluation at 13, n.64, which refers to ¶¶ 42, 45-48 of our Supplemental Aff. See also ¶¶ 52-57 of our Supplemental Aff. that are relevant to this issue, but not relied upon by the Department.